

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Coastal Lands
Honolulu, Hawai'i

Board of Land and Natural Resources
Department of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

FILE NO.: CDUA HA-3377
REF: OCCL: MC
Acceptance Date: September 26, 2006
180 Exp. Date: March 25, 2007

March 9, 2007

REGARDING: Single Family Residence

APPLICANT: Peter and Ellen Durst
5455 S. Newport Circle
Englewood, CO 80111

AGENT: Gregory Mooers
Mooers Enterprises LLC
PO Box 1101
Kamuela, HI 96743

LANDOWNER: Same as applicant

LOCATION: Keawaiki Lots, Kahauloa, South Kona, Hawai'i

TMK: (3) 8-3-05:6

PARCEL SIZE: 28,749 square feet

AREA OF USE: 3500 square feet

SUBZONE: General

DESCRIPTION OF AREA:

The 0.66-acre coastal property is located in the Keawaiki Lots in the South Kona District of Hawai'i County. It lies just south of Kealakekua Bay and 0.75 miles south of the Napo'opo'o Boat Ramp, on Kahauloa Bay. The parcel is entirely within the General Subzone of the State Land Use Conservation District. It is also within the Kealakekua Bay Historic District. **Exhibit 1** shows the parcel and the Conservation District, **Exhibit 2** is a Google Earth image of the project

site and its environs. **Exhibit 3** shows the area as viewed from Mamalahoa Highway and Napo'opo'o Road.

The parcel is bounded by an established residential neighborhood to the north, and six of the eight coastal lots in the immediate vicinity have single-family residences on them. East of these parcels is a large undeveloped parcel owned by Kamehameha Schools.

The coastal property is generally level, and the surface geology consists of a'a flows with little soil. Vegetation on the parcel is sparse, and is reflective of its landscaped history. Significant flora includes a few mature examples of coconuts (*Cocos nucifera*), Cook pines (*Araucaria columnaris*), African tulips (*Spathodea campanulata*), sea grape (*Cocoloba uvifera*), and umbrella trees (*Schefflera actinophylla*). The coastal vegetation is more representative of a native ecosystem, and includes 'uhaloa (*Waltheria indica*), naupaka (*Scaevola sericea*), and kou (*Cordia subcordata*).

The shoreline is an a'a cliff approximately 20 feet in height. The average elevation of the property is 20 to 24 feet above sea level. DLNR certified the shoreline on November 14, 2006. There is also a surge-hole¹ on the property, on the makai side of the shoreline.

In 1968 the Board of Land and Natural Resources (BLNR) approved Conservation District Use Permit (CDUP) HA-70, allowing a single-family residence to be built on the parcel. In 2000 the BLNR approved CDUP HA-2990, allowing a new landowner to demolish the existing house and build a new one. The old house was demolished, but the new house was never constructed and the permit lapsed.

The parcel is currently vacant but for some cement slabs and a rock wall mauka of the shoreline but within the setback area. **Exhibit 4** contains current photographs of the lot.

There are no known surface archaeological or cultural sites on the parcel. Real Property maps show a trail passing through six of the area's lots, including the subject lot. There is no evidence of the trail on the ground. Na Ala Hele researched the trail and, in a letter dated July 17, 2000, stated that there was no evidence of this alignment of the trail on any map predating 1892 and, in the absence of such evidence, ownership of the trail could not be confirmed in favor of the State. DLNR noted at the time that these portions of the trail encumbrance appeared to have been abandoned.

PROPOSED PROJECT:

The applicant proposes to build a single story 3500-square foot single-family residence on the parcel. The developed area includes a 2038 square-foot main house, and a semi-detached 832 square-foot unit, a 512 square-foot garage, a 59 square-foot plunge pool, and a 59 square-foot water feature. This calculation does not include the breezeways or at-grade lanais.

¹ Geologists do not consider the structure a *blow-hole* as there is no compressed air in the system that ejects water with a significant force. One consultant coined this term, *surge-hole*, to better describe the structure.

The semi-detached unit contains two bedrooms, two baths, and a third front room whose purpose is not discussed in the plans. The unit will be connected to the main house by a walkway, and will fall under the same roof, although the sides of the breezeway will be open.

Exhibit 5 shows the floor plan, while **Exhibit 6** shows the roof and elevation plans.

The parcel was graded during previous construction activities. The applicant estimates that new work will involve approximately 100 cubic yards of cut and fill. The proposed grading is to occur on the mauka side of the house, near an existing gravel road. Landscaping involves moving a number of palm trees, building a CRM sitting wall around a natural blowhole / surge hole, building a berm between the house and the driveway, and conceptual plantings involving native and introduced species along the perimeter of the parcel. The indigenous coastal vegetation will be incorporated into the landscaping. Irregular stone pavers will be used on the lanai.

The CRM wall will run along the 20-foot elevation, at the top of the slope defining the boundary of the surge hole. It is within the shoreline setback area, but not along the actual shoreline. **Exhibit 7** is a detail from the landscape plan showing the CRM wall.

AGENCY COMMENTS:

The CDUA and Draft Environmental Assessment were referred for review and comment to the DLNR – Division of Forestry and Wildlife, Historic Preservation Division, Land Division, Aquatic Resources Division, Na Ala Hele, Engineering; The Office of Hawaiian Affairs; Hawai'i County Planning Department; Hawai'i County Department of Public Works; and the Department of Health Office of Environmental Quality Control.

Notice of the project was published in the October 8, 2006 edition of the *Environmental Notice*; notice of the FONSI determination was published in the January 8, 2007 edition.

The documents were also made available to the general public at the Kealahou Public Library.

The following comments were received:

Office of Hawaiian Affairs (OHA)

- OHA notes that community members were consulted during the EA process in 2000, but recommends that the community be contacted again to see if there are any new cultural or community concerns.
- OHA is also concerned that the EA did not contain an alternatives analysis.

Applicant's Response

- Applicant notes that the lot in question is part of a developed neighborhood, and until recently contained a house dating from the 1960's. As the lot has already been graded, the project should not result in a change to the material or cultural setting of the

property. The applicant states that they confirmed this in consultation with the native Hawaiian neighbors who consulted on the original document.

- The applicant has a different understanding of the EA requirements, and does not believe that an in-depth alternatives analysis is required as the project already meets the criteria set forth by OCCL. Applicant notes that OCCL can recommend mitigation actions should the need arise.*

County of Hawai'i Planning Department

Planning notes that a Special management Permit was approved for the project on September 20, 2006. Planning has no other comments beyond requiring compliance with the stated conditions of the approval.

DLNR Aquatic Resources Division

Aquatics recommended that precautions should be taken so that debris and contaminants do not wash into Kealahou Bay.

Applicant's Response

Applicant has amended the proposal to incorporate the following best management practices:

- Construction activities with the potential to produce polluted runoff will be limited to periods of low rainfall.*
- Cleared areas will be replanted or otherwise stabilized as soon as possible.*
- Construction materials, petroleum products, wastes, debris, and landscaping byproducts will be prevented from blowing, falling, slowing, or leaching into the ocean.*

DLNR –Historic Preservation Division (HPD)

Historic Preservation does not believe that historic sites will be jeopardized by the project.

Applicant Response

Applicant states that work will stop and HPD will be contacted if any previously unidentified site, remains, iwi, pavings, or other cultural deposits are uncovered.

DLNR – Land Division

No Comments

DLNR – Na Ala Hele

No Comments

DLNR – Division of Forestry and Wildlife

No Comments

ANALYSIS:

Following review and acceptance for processing, the applicant was notified, by letter dated September 27, 2006 that:

1. The SFR was an identified land use within the Conservation District, pursuant to Hawai'i Administrative Rules (HAR) §13-5-24 *Identified land uses in the resource subzone, R-8 Single Family Residence, (D-1)*. This use requires a permit from the DLNR. The final decision as to whether to grant or deny the permits lies with the Board of Land and Natural Resources (BLNR).
2. Pursuant to HAR §13-5-40 *Hearings*, no public hearing was required.
3. Pursuant to HAR §13-5-31 *Permit Applications*, the permit required that an environmental assessment be carried out. A Finding of No Significant Impact (FONSI) to the environment was anticipated for the proposed project. The draft environmental assessment (DEA) for the project was submitted to the Office of Environmental Quality Control (OEQC) for publication in the October 8, 2006 issue of the *Environmental Notice*.

A Finding of No Significant Impact (FONSI) was published in the OEQC's *Environmental Notice* on January 8, 2007. There were no challenges to the FONSI.

§13-5-30 CRITERIA:

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30 HAR.

- 1) *The proposed use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety and welfare.

Staff is of the opinion that the proposed action will increase structural density on a vacant parcel. Staff has found that the proposed use within the Conservation District will not be detrimental to conservation values.

- 2) *The proposed land use is consistent with the objectives of the Subzone of the land on which the use will occur.*

The objective of the General Subzone is *to designate open space where specific conservation uses may not be defined, but where urban use would be premature.*

Staff notes that both the proposed SFR and the landscaping are identified land uses within the Resource Subzone.

Staff notes that the main house, garage, and landscaping meet the design criteria set out in HAR §13-5.

The semi-detached unit, however, is similar in size and design to a guest wing that was part of the earlier CDUA in 2000. OCCL expressed concern at the time that the 'guest wing' could be used as a separate living unit, and the plans were subsequently modified. OCCL shares the same concerns about the current design, and notified the applicant of these concerns in our Acceptance Letter.

Staff does not concur that this unit in its current design is consistent with the goals of the subzone. It has the appearance and many characteristics of a separate dwelling, which would make it inconsistent with HAR §13-5-41 *Single family residences; standards, (b) Not more than one single family residence shall be authorized within the conservation district on a legal lot of record. Exhibit 8* shows a detail of this unit.

- 3) *The proposed land use complies with the provisions and guidelines contained in Chapter 205A, HRS entitled Coastal Zone Management (CZM), where applicable.*

The project complies with the policies and objectives of the CZM Program.

- 4) *The proposed land use will not cause substantial adverse impact to existing natural resources within the surrounding area, community or region.*

Staff notes that the proposed project will not have any adverse impact to existing natural resources within the surrounding area, community or region, provided that adequate mitigation measures are implemented. Other neighboring parcels have been fully or partially cleared, and there are other small single-family residences surrounding the subject parcel. Staff notes that the proposed project will not detract from the rural character of the area.

- 5) *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding areas, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

Staff is of the opinion the proposed SFR will fit into the locality and surrounding areas, with the use of Best Management Practices and without significant or deleterious effects to the locality, surrounding area and parcel.

- 6) *The existing physical and environmental aspects of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, whichever is applicable.*

Staff notes the applicant has taken the appropriate steps to mitigate any potential impacts, and to maximize and enhance the natural beauty and open space characteristics of the subject parcel. The project is intended to blend in visually with the surrounding area.

- 7) *Subdivision of land will not be utilized to increase the intensity of land uses in the Conservation District.*

The proposed project does not involve subdivision of Conservation District land.

- 8) *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed action will not be materially detrimental to the public health, safety and welfare.

DISCUSSION:

The SFR is an identified land uses in the Resource Subzone pursuant to HAR§13-5-24 *Identified land uses in the resource subzone, R-8 Single Family Residence, (D-1).*

The parcel lies in a developed residential neighborhood. The neighborhood itself is bounded by the ocean and a large vacant lot owned by Kamehameha Schools. The subject parcel had a residence on it since 1968 (CDUP HA-70). A previous owner received a permit to tear down the original house and replace it with a new residence (CDUP HA-2290). The old house was demolished, but the owner never built the new house. This application is from a new owner.

The proposed residence is set back 40 feet from the certified shoreline. As most of the lot was graded in the past, new grading is expected to be minimal. The landscaping will incorporate many native plants, and appears to be well integrated with the character of the area.

A CRM sitting wall is the only structure proposed that would lie within the shoreline setback area. The wall will partially encircle a surge-hole connecting to the ocean. OCCL has consulted with staff coastal geologists, who concluded that the surrounding geology was predominately solid blue rock, and that erosive action from the surge-hole and other wave action was minimal. As the CRM wall does not abut the shoreline, staff does not believe that it will have a significant effect on coastal processes.

The parcel lies within the Kealahou Historical Area, and the applicant has agreed to use Best Management Practices during construction in order to minimize debris washing into the ocean. These practices will be outlined in the conditions of the permit.

The residence is similar in style and design to other houses in the region. It is one story, and partially surrounded by open lanai and breezeways.

Staff has concerns with the 832 square foot semi-detached unit, consisting of two bedrooms, two bathrooms, and a third common room. It is similar in style and design to a second dwelling. Staff does not feel that this unit complies with Conservation District Administrative Rules §13-5-41 *Single family residences; standards, (b) Not more than one single family residence shall be authorized within the conservation district on a legal lot of record.*

There are no known historic sites on the parcel.

OCCL does not believe that there will be any significant negative environmental or social impacts from the main residence, accessory structures, or associated landscaping.

Therefore, staff recommends the following:

RECOMMENDATION:

That the Board of Land and Natural Resources APPROVE CDUA HA-3377, with modifications, for the proposed Durst Single Family Residence in the Keawaiki Lots, Kahauloa, South Kona, Hawai'i, TMK (3) 8-3-05:6, subject to the following terms and conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, State and county governments, and the applicable parts of HAR §13-5-42;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawai'i harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health administrative rules. Particular attention should be paid to Hawai'i Administrative Rules (HAR), Section 11-60.1-33, "Fugitive Dust" and to Chapter 11-46, "Community Noise Control," and Chapter 11-54 National Pollutant Discharge Elimination System;
4. Before proceeding with any work authorized by the Board, the applicant shall submit four copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;
5. Any work or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been approved by the Department; further, all work and construction must be completed within three years of the approval;
6. The applicant shall notify the Office of Conservation and Coastal Lands in writing prior to the initiation, and upon completion, of the project;
7. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
8. The applicant will use Best Management Practices for the proposed project, including, but not limited, to:
 - a. Construction activities with the potential to produce polluted runoff will be limited to periods of low rainfall,

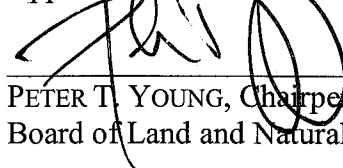
- b. Cleared areas will be replanted or otherwise stabilized as soon as possible, and
 - c. Construction materials, petroleum products, wastes, debris, and landscaping byproducts will be prevented from blowing, falling, slowing, or leaching into the ocean;
- 9. The applicant will give preference towards using native plants for the remaining landscape work;
 - 10. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;
 - 11. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;
 - 12. In the event that unrecorded historic remains (i.e., artifacts, or human skeletal remains) are inadvertently uncovered during construction or operations, all work shall cease in the vicinity and the applicant shall immediately contact the State Historic Preservation Division;
 - 13. The applicant shall provide documentation (i.e. book/page document number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
 - 14. The semi-detached 2 bedroom unit will not be part of this permit in its present form;
 - 15. Other terms and conditions as may be prescribed by the Chairperson; and
 - 16. That failure to comply with any of these conditions may render this Conservation District Use Permit null and void.

Respectfully Submitted,

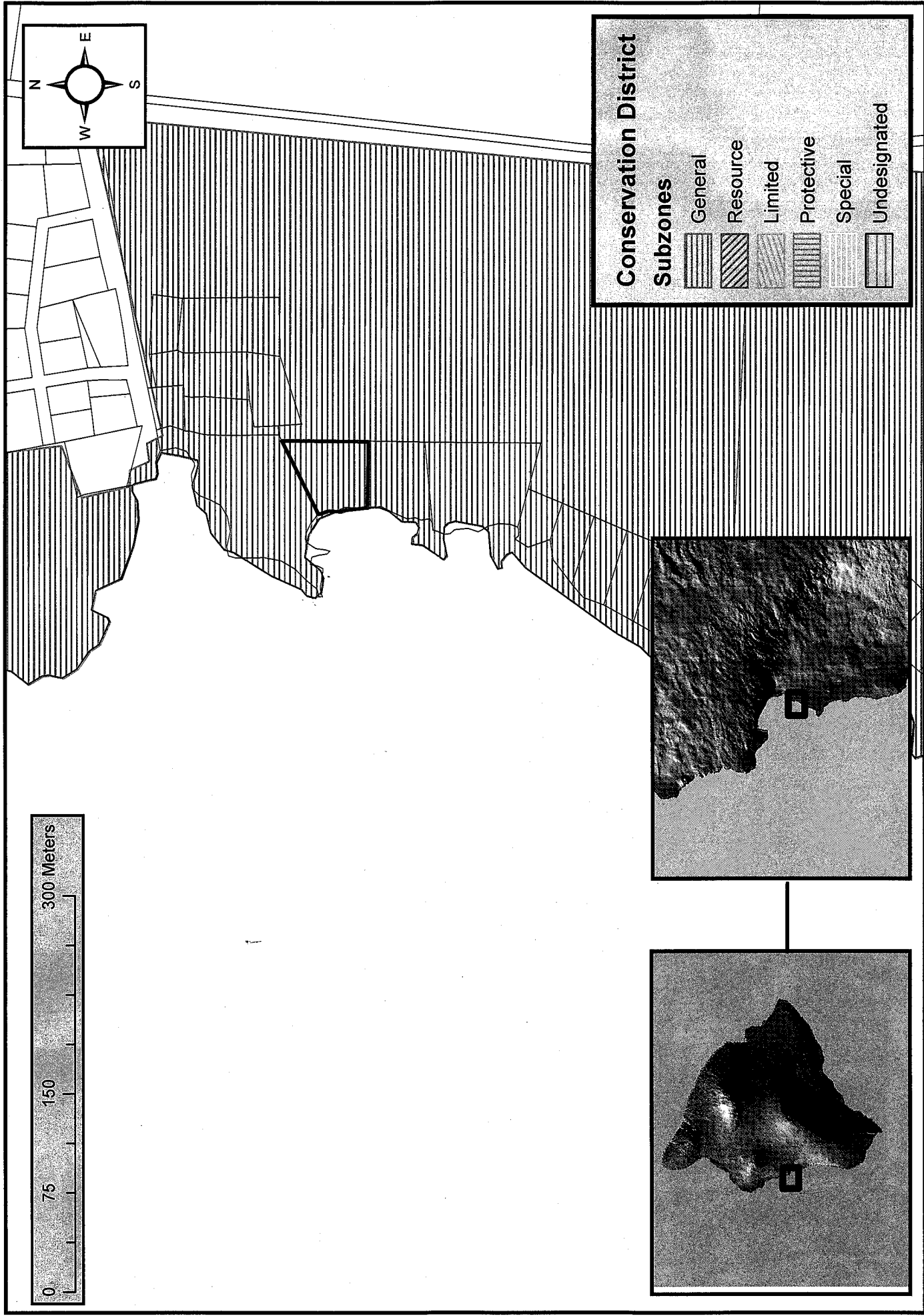


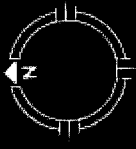
Michael Cain
Staff Planner

Approved for Submittal:



PETER T. YOUNG, Chairperson
Board of Land and Natural Resources





Kealahou Bay

Proposed Residence



1189 ft

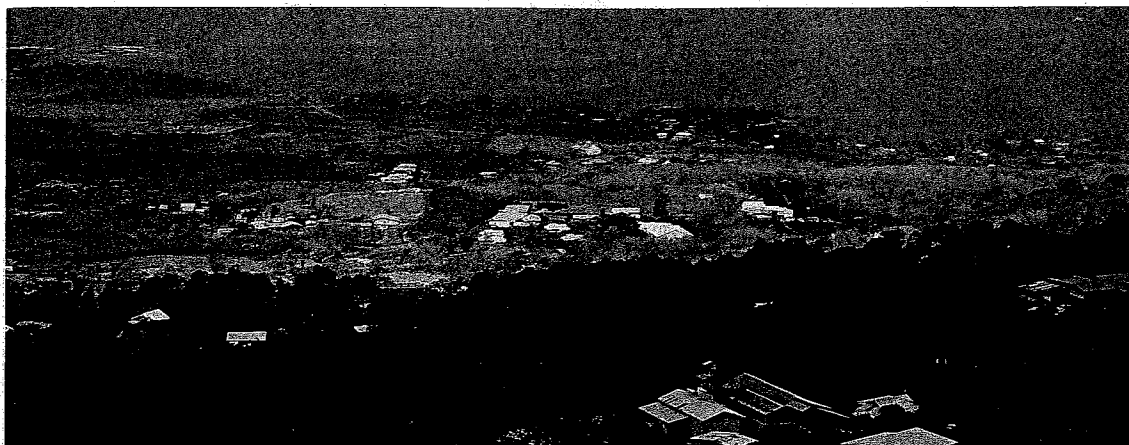
Image © 2007 DigitalGlobe
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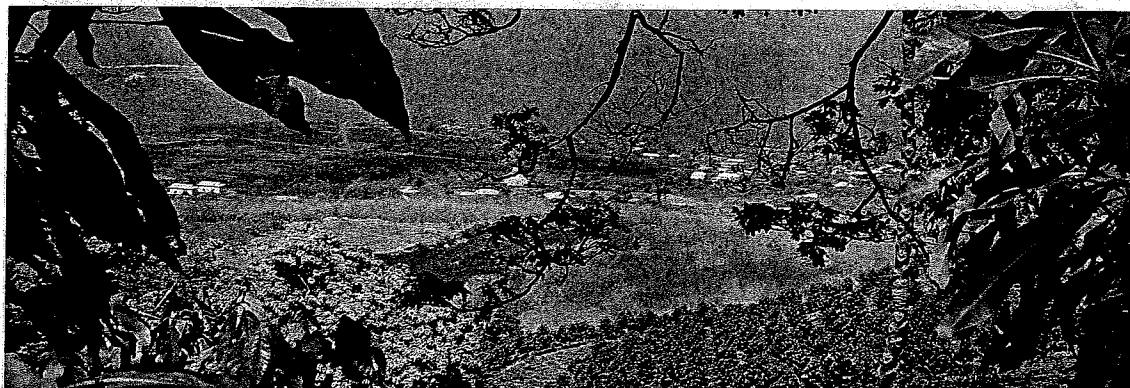
EXHIBIT 2

FIGURE 5 VIEW TO KAHAULOA BAY FROM VIEWPOINTS
Kahauloa Bay, with Keawaiki Beach Lots just to South, Indicated by Arrows

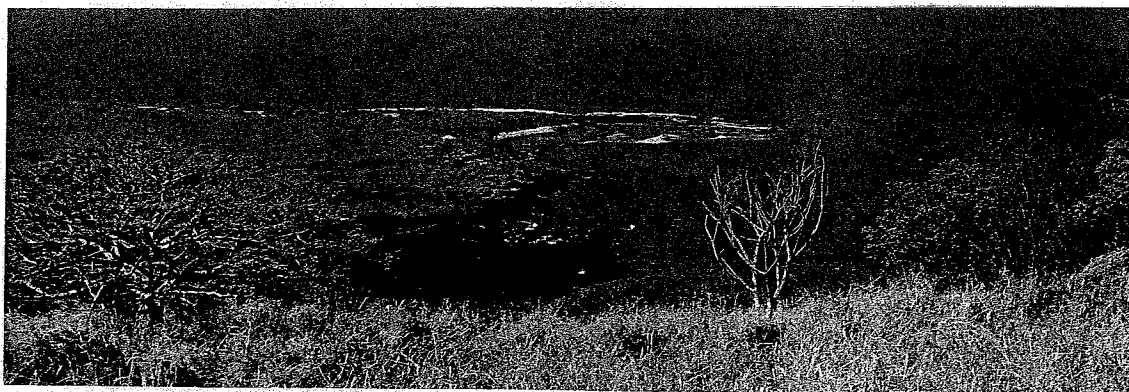
Mamalahoa Highway ▼



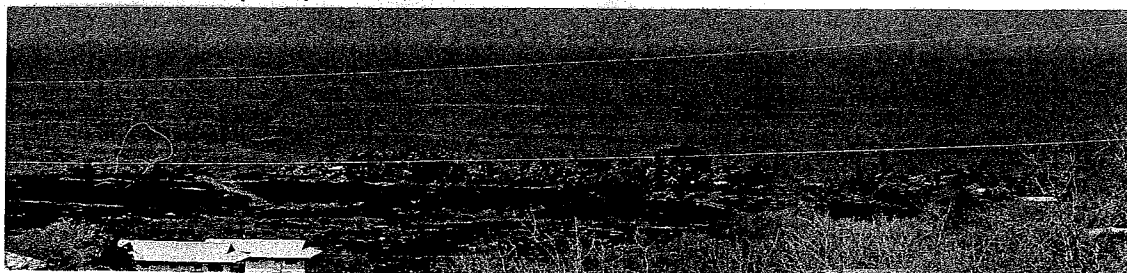
Upper Napo`opo`o Road ▼



Lower Napo`opo`o Road ▼



Lower Napo`opo`o Road ▼



EXHIBIT

EXHIBIT 3

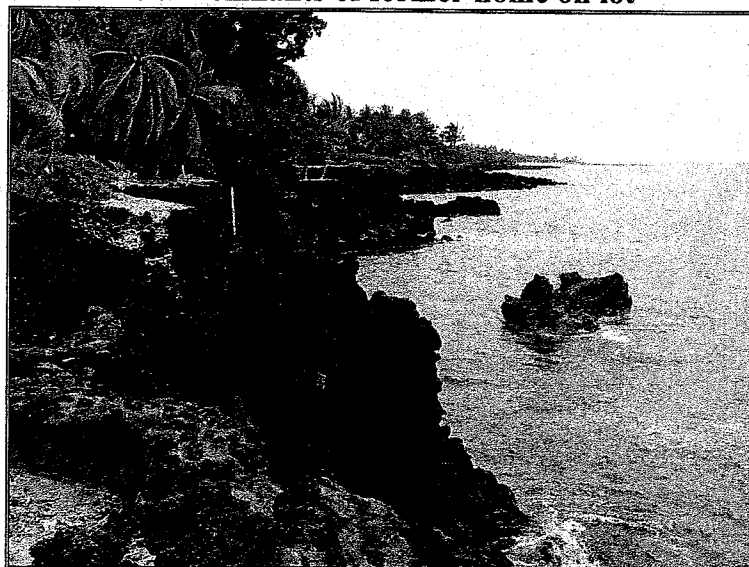
Figure 3 Project Site Photographs



3a Cleared state of lot

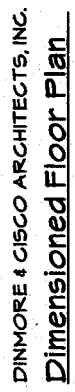


3b Remnants of former home on lot

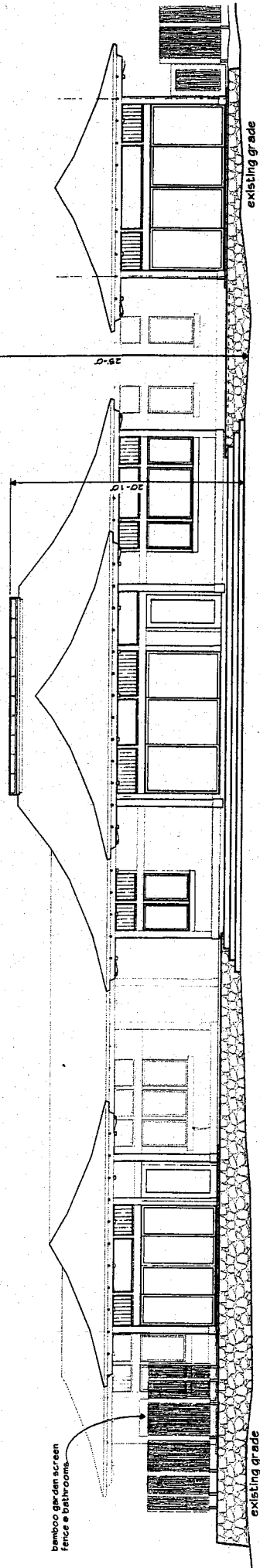


3c 'A'a shoreline in front of lot

EXHIBIT 5

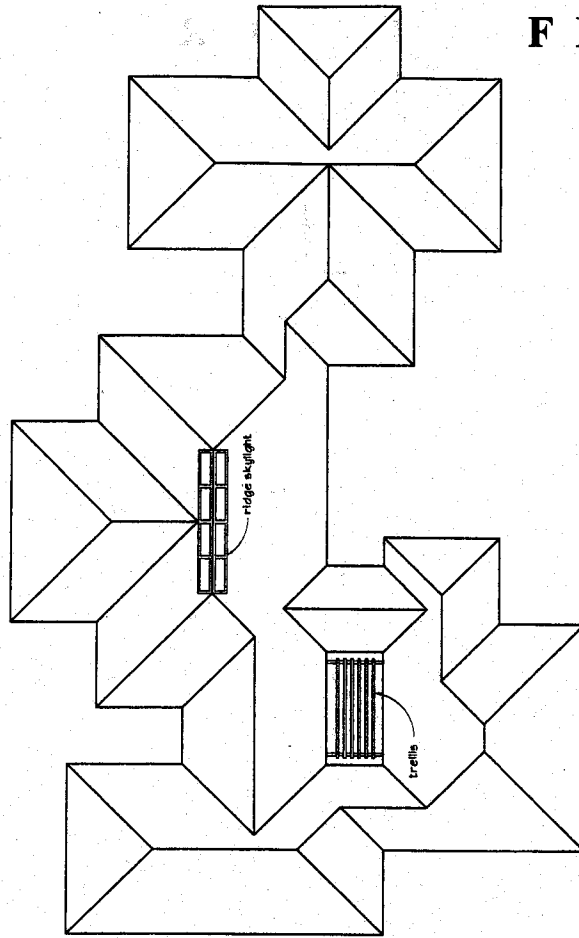


maximum height plane



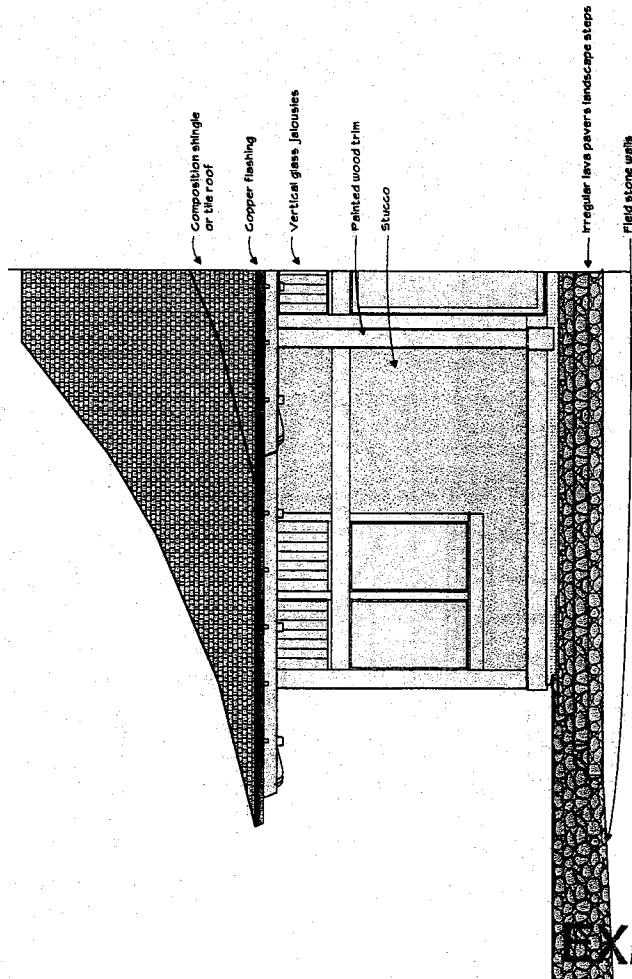
Example Elevation (Makai)

Scale: 1/4" = 1'-0"



Roof Plan

Scale: 1/8" = 1'-0"



Color Scheme

FIGURE 4c

Conceptual Design for:
Peter & Ellen Durst
Keawiki Beach Lots
Kahauloa, Island of Hawaii
TMK: 8-3-05: 06

DINMORE & GISCO ARCHITECTS, INC.

PACIFIC OCEAN

Shoreline Opinion by
Wes Thomas Associates
submitted to DLNR
June 20, 2006

